STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 29, 2008
v	No. 275753 Wayne Circuit Court
TERRELL THOMAS KENNEDY, Defendant-Appellant.	LC No. 05-008334-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's home was searched based on allegations that he was selling narcotics from it. During the search, police officers found defendant and his girlfriend in bed in the basement. On a table near the bed, the officers found a loaded handgun. A baggie holding several smaller ziplock baggies containing crack cocaine and marijuana was also on the table. A digital scale was found in the rafters, and $300 was found on top of a television in the basement.

Defendant first maintains that five points were erroneously assessed during sentencing for offense variable (OV) 15, aggravated controlled substances offenses, based on the lack of evidence of trafficking. A sentencing court has discretion with respect to the scoring of offense variables, provided that evidence of record supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "'Scoring decisions for which there is any evidence in support will be upheld.'" *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). We review issues of statutory interpretation de novo. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003).

MCL 777.45(1)(g) provides that five points are to be scored for an aggravated controlled substance offense if:

> [t]he offense involved the delivery or possession with intent to deliver marihuana or any other controlled substance or a counterfeit controlled substance or possession of controlled substances or counterfeit controlled substances having a value or under such circumstances as to indicate trafficking.

MCL 777.45(2)(c) defines "trafficking" as "the sale or delivery of controlled substances . . . on a continuing basis to 1 or more other individuals for further distribution."

Defendant argues that the trial court's sentencing decision was improper because the prosecutor failed to present evidence of trafficking as defined under MCL 777.45(2)(c). We disagree. We interpret the language of MCL 777.45(1)(g) to mean that five points are to be scored: 1) if the offense involved the delivery or possession with intent to deliver drugs, or 2) if the offense involved possession of drugs having a value or under such circumstances as to indicate trafficking. Such a reading results in an interpretation that gives effect to the entire statute without rendering any part of it surplusage. See *People v Perkins*, 473 Mich 626, 638; 703 NW2d 448 (2005). We also note that it would be redundant to require a showing that the offense indicated trafficking in cases where the defendant was convicted of delivery or possession with intent to deliver, which are crimes that by their very nature involve trafficking or an inference of trafficking.

Defendant admitted ownership of cocaine and marijuana, and admitted that he sold those substances to others. Packaging materials and a scale of the type used to weigh narcotics were found in defendant's home, and defendant's mother admitted that her son was selling something out of her home. Because the record supports a finding that the offenses involved the possession with intent to deliver cocaine and marijuana, the trial court did not abuse its discretion in scoring five points for OV 15.

Defendant also argues that he was denied the effective assistance of counsel because the prosecutor improperly injected his personal belief in defendant's guilt into his arguments, and defense counsel failed to object to those remarks. We disagree.

A prosecutor may argue all reasonable inferences from the evidence relating to the theory of prosecution. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). However, a prosecutor may not invoke the prestige of the office or suggest that he or she has special knowledge regarding the veracity of witnesses. *Id*. at 276; *People v Matuszak*, 263 Mich App 42, 54; 687 NW2d 342 (2004). In the challenged statements during closing arguments, the prosecutor used the first-person pronoun "we" when outlining and summarizing the testimony and evidence presented, commenting that, "we believe we have proven" defendant's guilt. Where a prosecutor's argument is based on the evidence, and does not impermissibly propose that the jury make its decision based on the prosecutor's personal belief or the authority of the prosecutor's office, the use of first-person pronouns is not cause for reversal. *People v Swartz*, 171 Mich App 364, 370-371; 429 NW2d 905 (1988). Defendant does not cite any prosecutorial statements that were statements of personal belief or special knowledge of the guilt of defendant, or personal belief or special knowledge of the veracity of the prosecution's witnesses. To the contrary, the substance of these challenged statements were clearly designed to have the jury review the evidence presented at trial to decide whether defendant was guilty. These remarks

were not improper. Therefore, because trial counsel was not required to make a futile objection to prosecutor's comments, *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998), defendant cannot show that counsel provided ineffective assistance.

We affirm.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto